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24  
25 **IN THE UNITED STATES DISTRICT COURT**  
26 **NORTHERN DISTRICT OF CALIFORNIA**  
27 **SAN FRANCISCO DIVISION**  
28

FLATWORLD INTERACTIVES LLC

Plaintiff,

v.

APPLE INC.

Defendant.

Case No. 3:12-01956-JSW (EDL)

**DECLARATION OF MICHAEL T. PIEJA  
PURSUANT TO THE COURT'S APRIL 18,  
2013, ORDER (DOCKET NO. 111)**

Pursuant to the Court's Order of April 18, 2013 (Docket No. 111), I, Michael T. Pieja,  
hereby submit the following declaration. I am a member of Bridges & Mavrakakis LLP, counsel  
of record for Defendant Apple Inc. in the above-captioned matter. The matters referred to in this

1 declaration are based on personal knowledge, unless otherwise specified, and if called as a  
2 witness I could, and would, testify competently to these matters.

3 1. At the April 9, 2013, motion hearing, before this Court, the parties discussed  
4 FlatWorld's motion to compel the production of certain documents relating to Apple's claims of  
5 damages in other litigation. At the hearing, and in an Order dated April 18, 2013, the Court  
6 ordered Apple to provide a declaration setting forth what would be required to produce to  
7 FlatWorld copies of Apple's damages expert reports and exhibits thereto, along with any trial  
8 transcripts, from the litigation between Apple and Motorola, consistent with the Protective Order  
9 in that case.  
10

11 2. I am also counsel of record for Apple in certain of its litigations with Motorola  
12 and have therefore been able to secure the necessary protective order permissions to review the  
13 documents in question personally and to provide the information below to the Court based on my  
14 personal review and knowledge.  
15

16 3. There are two litigations between Apple and Motorola that included damages  
17 claims on patents relating generally to graphical user interfaces that could be used in a touch-  
18 based product. The first of these is *Motorola Mobility, Inc. v. Apple Inc.*, Case No. 1:12-cv-  
19 20271-RNS (S.D. Fla.). I am counsel of record for Apple in that action. Due to the schedule  
20 adopted in that case, no expert reports have yet been submitted or exchanged there.  
21

22 4. The second case is *Apple Inc. et al v. Motorola Inc. et al*, Case No. 11-cv-08540  
23 (N.D. Ill.). This litigation involved around twenty patents. I am personally familiar with the  
24 subject matter of most of these patents, and the vast majority of them relate to operating systems  
25 and software design, or to cellular telecommunications standards, rather than user-interface and  
26 touch-related technologies.

27 5. I have conferred with the counsel who actively represented Apple in the Northern  
28

1 District of Illinois action and I understand that, in that case, Apple provided expert reports  
2 relating to the issue of damages from Brian W. Napper. I am informed that Mr. Napper  
3 submitted three expert reports: an initial report addressing Apple's claims of infringement, a  
4 rebuttal report addressing Motorola's claims of infringement, and a supplemental report also  
5 addressing Apple's claims of infringement. I understood from page 6 of FlatWorld's reply brief,  
6 and from page 15 of the hearing transcript that FlatWorld has limited its request to Apple's  
7 expert reports relating to Apple's claims of patent infringement, and I have reviewed both such  
8 reports.  
9

10 6. Mr. Napper's initial expert report is approximately 300 pages long. The parties in  
11 the *Apple v. Motorola* (N.D. Ill.) litigation have already generated a version of this report with  
12 Motorola's CBI redacted. These redacted versions were generated as a result of an agreement  
13 between the parties in *Apple v. Motorola*, so that each party's counsel could show their client a  
14 redacted version of the reports.  
15

16 7. In addition to Motorola's CBI, Mr. Napper's first report also contains information  
17 relating to patent license and settlement agreements between Apple and over 125 third parties,  
18 which Mr. Napper included as part of his attempt to identify comparable licenses for his analysis  
19 of the "hypothetical negotiation" between Apple and Motorola. This information has not been  
20 redacted. The vast majority of the third-party licenses referenced in Mr. Napper's report do not  
21 relate to user-interface and touch-related technologies, but relate to other, different technologies  
22 such as cellular telecommunications. As noted above, *Apple v. Motorola* involved many patents  
23 that do not relate to user interface or touch technologies, and I understand that these licenses  
24 were alleged to be relevant to these other technologies.  
25

26 8. The body of Mr. Napper's March 20, 2012, report discusses some of these third-  
27 party licenses and their impact on the hypothetical negotiation. An addendum includes further  
28

1 descriptions of the terms of each license, specifically including the monetary payments made or  
2 received under each, the rights granted by each license, and other terms. In total, information  
3 relating to these licenses is information is present on 47 pages of the report, 44 of which are  
4 summaries and analyses written in approximately an 8-point font.

5 9. Without reviewing each of the 125 licenses in detail, I cannot state for certain  
6 which of the information relating to the terms of each of the licenses in question is subject to a  
7 confidentiality restriction in the license itself. I have, however, seen over a dozen of the licenses  
8 in question as part of my work on various matters for Apple, and I know that the financial, and  
9 certain other, terms for each of those licenses are subject to a confidentiality restriction. I also  
10 know from my personal experience that it is extremely common, but not universal, for Apple's  
11 patent licenses to include a provision that states that certain terms of the license, such as the  
12 financial terms, are confidential and cannot be divulged without permission. The licenses also  
13 provide requirements about what notice must be provided to the third parties prior to disclosure  
14 of any information designated as confidential so that they may object. These notice requirements  
15 generally must be complied with each time the information is produced in litigation.  
16

17 10. Accordingly, in order to redact the confidential portions of the third-party license  
18 information, or to produce Mr. Napper's initial report with only Motorola's CBI redacted, I  
19 would have to do the following: review the licenses for each of the 125 third parties at issue,  
20 determine what confidentiality provisions are included in each, identify the requirements the  
21 license sets forth for notifying the relevant third parties, identify the appropriate third-party  
22 contacts for each license, and contact each third party to secure their permission to disclose the  
23 information in this case or their agreement that I had fully redacted any confidential information  
24 of theirs from the document. If the third party objected, I would have to negotiate with them  
25 regarding their objections and respond to any motion that any of these third parties chose to file.  
26  
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